IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.4.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.30403 of 2004
& W.P.M.P.No.36868 of 2004

K.Damodaran(PC.590) .. Petitioner

vs.

1. The Registrar,
The Tamil Nadu Administrative Tribunal,
Chennai-600 104.

2. The Superintendent of Police,
Villupuram District,
Villupuram.

3. The Deputy Superintendent of Police,
Thirukoilur,
Villupuram District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, calling for the records of the first respondent in T.A.No.877 of 1993 and quash the order dated 20.6.2003 passed therein and direct the respondents 2 and 3 herein to drop all further proceedings in respect of the charge memo P.R.No.10/88 dated 28.2.2004.

For petitioner : Mr.V.Ramasubramanian
For respondents : Mrs.V.Velumani, Addl.G.P. for RR-2 & 3
R-1 Tribunal

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ORDER

(The Order of the Court was made by P.K.Misra,J.)

Heard learned counsel for the petitioner and the learned Additional Government Pleader for respondents 2 and 3.

2. Even though the matter has been listed for considering the question of continuation of interim order of stay, since the very same question is involved in the writ petition, the writ petition itself is taken up for disposal on merits.

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3. The writ petition is directed against the order passed by the Tribunal in T.A.No.877 of 1993, dated 20.6.2003. The facts giving rise to the present writ petition are as follows:

The petitioner was serving as Police Constable. A charge memo was issued in the year 1978 in P.R.No.164/78 on the allegation that the petitioner had conducted himself in highly reprehensible and indisciplinary manner in having effected unauthorised prohibition raid on 2.3.1978 at Kanakanthal and Thimmachur in mufti while on sub-jail guard duty. After enquiry, the disciplinary authority imposed punishment of dismissal from service. However, the petitioner filed appeal, which was considered by the Deputy Inspector General of Police, Chingleput Range, Chennai-18. The appellate authority set aside the order of dismissal and directed that the present writ petitioner should be reinstated in service and the period out of employment should be treated as duty period. It is not disputed that thereafter, the petitioner was reinstated in service. Subsequently, after a lapse of about six years, a fresh disciplinary proceeding bearing No.1/PR/52/85 dated 23.3.1985 was initiated by the Deputy Superintendent of Police, Villupuram against the petitioner on the following charge:

> "Highly reprehensible and indisciplinary conduct in having effected unauthorised prohibition raid on 2.3.78 at Kanakanandal and Thimmachur in mufti while on Subjail guard duty. "

The statement of allegation in the subsequent charge is same as the statement of allegation in the earlier charge, namely in P.R.No.164/78. The petitioner challenged such charge memo bearing No.1/P.R.52/85 by filing W.P.No.12301 of 1987 and an order of interim stay was passed in such writ petition on 10.12.1987. Subsequently, on establishment of the Tamil Nadu Administrative Tribunal, such writ petition stood transferred to the Tamil Nadu Administrative Tribunal and it was re-numbered as T.A.No.877 of 1993. Such T.A. has been disposed of by the Tribunal by passing the following order:

> "This application is filed by Thiru.K.Damodaran employed as Police Constable, Villiyanur, praying to quash the charge memo served on him in P.R.No.52/85. The applicant is charged for reprehensible and indisciplinary conduct in having effected unauthorized prohibition raid on 2.3.1978 at Kanakanandal and Thimmachur in mufti while on Sub-Jail Guard Duty. There is nothing improper or illegal about the charge memo. The applicant is not authorised to conduct any prohibition raid. The applicant was on other duty, during which, he has gone to certain villages in mufti and conducted prohibition raids, obviously, for the purpose of extracting bribe or illegal gratification. The application is filed in the year 1987 as Writ Petition before the High Court. No stay has been granted. Disciplinary proceedings must have bee proceeded with and the applicant must have been dealt with as per the rules. In view of the long lapse of time, the application is dismissed as infructuous."

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4. Such order of the Tribunal is now under challenge in the present writ petition. At the time of admission of the present writ petition, an order of interim stay has been granted on 17.11.2004. On a bare perusal of the order passed by the Tribunal, it is apparent that the matter has been disposed of in a cursory manner without proper application of mind to the materials on record. In the normal course, after quashing of such an order, the matter could be remanded by this Court for fresh disposal. However, since the Tribunal has become non-functional, the present writ petition itself has to be decided on merits.

5. The main contention raised by the petitioner is to the effect that once punishment on the very same charge has been quashed by the appellate authority, there was no jurisdiction to issue a second charge memo on the self-same allegation.

6. After going through the materials on record, it is amply clear that the allegation made in the first charge memo is similar to the allegation made in the second charge memo. Since the appellate authority has already dealt with the matter and had directed reinstatement of the petitioner, and there was no direction for any fresh enquiry, it was not open for the Deputy Superintendent of Police to initiate a fresh proceeding. It is thus obvious that subsequent proceeding is without jurisdiction, which is accordingly quashed. The writ petition is allowed. No costs. W.P.M.P. is closed.

cs

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar,
   The Tamil Nadu Administrative Tribunal,
   Chennai-600 104.

2. The Superintendent of Police,
   Villupuram District, Villupuram.

3. The Deputy Superintendent of Police,
   Thirukoilur,
   Villupuram District.

One CC To Mr.V.Ramasubramanian, Advocate, SR.No.19659.
One CC To Government Pleader, SR.No.19795.

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PV(CO)
RVL 10.05.2006

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